

### **REMARKS**

This responds to the Final Office Action mailed on October 7, 2008.

Claims 1, 18, 21, 30 - 32, and 36 - 40 are amended, claims 2 and 17 are canceled, and no claims are added; as a result, claims 1, 3-15, and 18-40 are now pending in this application.

#### **§103 Rejection of the Claims**

Claims 1-15, 18-24, 27-29, and 30-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ding et al. (U.S. Patent No. 6,691,067) in view of Eder et al. (U.S. Publication No. 2001/0041996).

Claims 17, 25, and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ding et al. (U.S. Patent No. 6,691,067) as applied to claims 2, 9, and 21 above in view of Hattori et al. (U.S. Patent No. 6,557,025).

Applicants respectfully submit that the Office Action did not make out a *prima facie* case of obviousness for at least the following reasons. Even if combined, the cited references fail to teach or suggest all of the claimed elements of Applicants' claimed embodiments.

In examining claims under 35 U.S.C. § 103(a), it is necessary for the Examiner to establish a proper *prima facie* case of obviousness before rejecting a claim as required by the Board of Patent Appeals and Interferences (BPAI). Such a rejection cannot be made if there is no evidence or suggestion in a cited reference of a claimed configuration. *Ex Parte Katoh et al.*, Appeal 20071460, Decided May 29, 2007. Further, it is improper to reject a claim when there is no suggestion to combine the teachings of the cited references, except from using the Applicants' invention as a template through hindsight reconstruction of the Applicants' claims. *Ex Parte Crawford et al.*, Appeal 20062429, Decided May 30, 2007. Moreover, a patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727 (2007). See also M.P.E.P. § 2142. "[R]jections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-41 (2007)).

Moreover, the recent U.S. Supreme Court decision of *KSR v. Teleflex* provides a tripartite test to evaluate obviousness. “A rationale to support a conclusion that a claim would have been obvious is that *all the claimed elements were known* in the prior art and one skilled in the art could have combined the elements as claimed by known methods *with no change in their respective functions*, and *the combination would have yielded nothing more than predictable results* to one of ordinary skill in the art.” (See *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007)). Emphasis added.)

Eder describes an automated system and method for measuring the performance of elements of a business enterprise and for valuing said elements on a specified valuation date. However, as admitted in the Office Action at page 3:

Eder does not disclose delivering the processed data among the agents to enable assembly of the body of aggregated and summarized information that is provided through the application used to manage an enterprise, based on the processed data, to be used to manage aspects of the enterprise. (Emphasis added).

Ding describes a system and method for estimating statistics concerning system metrics to provide for the accurate and efficient monitoring of one or more computer systems. The system preferably comprises a distributed computing environment, i.e., an enterprise, which comprises a plurality of interconnected computer systems. At least one of the computer systems is an agent computer system which includes agent software and/or system software for the collection of data relating to one or more metrics, i.e., measurements of system resources. Metric data is continually collected over the course of a measurement interval, regularly placed into a registry of metrics, and then periodically sampled from the registry indirectly.

Hattori describes a planning section that generates a plan to be executed by agents on a node. In the case where the plan generated uses an uncertain knowledge required to be processed in other nodes, a judging section judges the communication line connecting the node and a network is low or high in reliability. In the case where the reliability of the communication line is low, an agent management unit moves the agent for executing the plan to another node for processing the uncertain knowledge. In the case where the reliability of the communication line is high, on the other hand, a cooperation protocol realization section requests an agent on another node to process the uncertain knowledge. An agent execution means executes the plan generated.

As admitted on page 22 of the Office Action:

Ding does not disclose that elements that conform to the network model declare their capabilities to one another. However, Hattori discloses that elements that conform to the network model declare their capabilities to one another (Column 18, lines 42-48).

The portion of Hattori referenced in the Office Action is set forth below:

As described above, according to this embodiment, a plurality of agents cooperate with each other using a standard inter-agent cooperation technique according to a contract net protocol generated by the cooperative protocol realization section 113 and blackboard section 106 thereby to efficiently utilize the information distributed over the network 100N. (Hattori, col. 8, lines 42-48).

However, the portion of Hattori cited in the Office Action does not disclose or suggest the idea that agents conform to the network model and declare their capabilities to one another. Hattori merely mentions that agents can cooperate with each other using a standard inter-agent cooperation technique. In other words, Hattori describes agents that can communicate with each other. However, there is no disclosure or teaching in Hattori of agents conforming to the network model and declaring their capabilities to one another as presently claimed. Hattori does not describe or suggest this element. Eder does not describe or suggest this element as Eder admittedly does not describe the delivery of processed data among agents. Ding is admitted to lack a disclosure of this element as well. Claim 1 has been amended to include, “the executable agents being organized in accordance with a network model and being configured to declare their capabilities to one another.” Claims 21, 30, 32, 36, 37, 38, and 40 have been similarly amended. Thus, for the reasons explained above, Ding, Eder, and Hattori, alone or in combination lack a disclosure of all claimed elements and thus do not render obvious the embodiments claimed in amended claims 1, 21, 30, 32, 36, 37, 38, and 40 or claims dependent thereon.

The Office Action at pages 12 and 13 further alleges:

Ding disclose[s] storing and updating, in a cube, multi-dimensional current data obtained from the data sets about an aspect of an enterprise (Column 12, lines 11-18), storing, in a cube, data defining relationships between metrics used to manage an aspect of the enterprise and the multi-dimensional current data (Column 6, lines 38-41), storing, in a cube, metadata about the multi-dimensional current data, and using the cubes to access current data in responding to queries, to generate the information useful in managing the aspect of the enterprise (Column 10, lines 33-45). (Emphasis added).

The portions of Ding referenced in the Office Action are set forth below. Ding at col. 12, lines 10-20 states:

Performance measurement is the process of gathering data concerning the state of the hardware and/or software of a computer system. In one embodiment, system software and/or data collectors 304 continually monitor one or more elements of the computer system and collect raw metric data relating to system performance, preferably at a high frequency. The metric data is written to a memory and periodically updated. The memory is preferably a registry of metrics. Often, different metrics are not updated at the same time or in the same interval. However, it is assumed that the raw data in the registry accurately reflects the system state of interest.

Ding at col. 6, lines 36-47 states:

A metric is a measurement of a particular system resource. For example, in the preferred embodiment, the enterprise management system 180 collects metrics such as CPU, disk I/O, file system usage, database usage, threads, processes, kernel, registry, logical volumes, and paging. Each computer system 150 in the enterprise 100 may comprise a console node 400, an agent node 300, or both a console node 400 and an agent node 300 in the preferred embodiment, server computer systems include agent nodes 300, and other computer systems may also comprise agent nodes 300 as desired, e.g., file servers, print servers, e-mail servers, and internet servers.

There is no reference in these portions of Ding, or other portions of the reference, that discloses or suggests the use of a cube as currently claimed in claims 31 and 39 and claims dependent thereon. Ding does not disclose or suggest, “storing and updating, in a cube, multi-dimensional current data” or “storing, in a cube, data defining relationships between metrics” or “storing, in a cube, metadata about the multi-dimensional current data” or “using the cubes to access current data in responding to queries” as currently claimed in claims 31 and 39 and claims dependent thereon. Thus, Ding alone or in combination with Eder does not render obvious the presently claimed embodiments of claims 31 and 39 and claims dependent thereon. The Applicants respectfully request withdrawal of the §103(a) rejections.

**CONCLUSION**

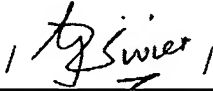
Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (408) 278-4041 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(408) 278-4041

Date February 9, 2009

By   
Garth Vivier  
Reg. No. 57,313

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 9, 2009.

/ Jonathan Ferguson /

Jonathan Ferguson